

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN DOE,

Plaintiff,

vs.

VILLAGE OF DEERFIELD,
ILLINOIS, LISA BATCHELDER
and GARY ZALENSNY,

Defendants.

Docket No. 14 CV 07423

Chicago, Illinois
June 5, 2015
9:32 a.m.

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE ELAINE E. BUCKLO

APPEARANCES:

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For the Defendant: ANCEL, GLINK, DIAMOND, BUSH,
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1 THE CLERK: 14 CV 7423 Doe versus Deerfield.

2 MR. FLAXMAN: Good morning, your Honor. Kenneth
3 Flaxman.

4 THE COURT: Good morning.

5 MS. BEDNAREK: Good morning. Lucy Bednarek on
6 behalf of the village.

7 MR. HABIB: Good morning, your Honor. Robert
8 Habib. I represent Gary Zalensny.

9 THE COURT: Good morning.

10 MR. FLAXMAN: Did you see the motion I filed last
11 night?

12 THE COURT: I did. See, my problem is that, once
13 you file -- as you know, once you file an appeal, I wasn't
14 even sure that I -- you know, somehow we had -- Jackie just
15 somehow didn't -- missed the order that I had written in
16 terms of the explanation, or only the one part got in and not
17 the rest. But I wasn't even sure if I could enter the other
18 later. But obviously, if I didn't, they're just going to
19 send it back and say, why did you do this; or maybe they're
20 not because maybe they're going to say they don't have
21 jurisdiction.

22 My concern about -- I mean, I guess I can grant
23 your motion to withdraw. I guess that's not a problem. I
24 think I can do that anytime because that's not up on appeal.
25 I'm not sure -- I'm not sure it's -- well, I guess --

1 MR. FLAXMAN: Well --

2 THE COURT: I think I'll skip -- I mean, what I
3 wanted to do was just dismiss it because I think that's the
4 appropriate thing. And then if you wanted to go up and argue
5 about it, you could.

6 MR. FLAXMAN: But he might --

7 THE COURT: Or somebody.

8 MR. FLAXMAN: Well, he might very well say that
9 I -- here is my true identity and Flaxman is an idiot and
10 didn't do these things with my authorization, or something.
11 I don't know what he is going to say. But he might very well
12 not have the same -- not express to you the same vigor about
13 being anonymous that I expressed to you --

14 THE COURT: Well, that's fine.

15 MR. FLAXMAN: -- in the papers.

16 THE COURT: If he wants to pursue his suit, then
17 change it to a real name and go ahead, to the extent that
18 there is a valid suit.

19 MR. FLAXMAN: He might very well want to do that,
20 but I --

21 THE COURT: Well, I wasn't going to dismiss it
22 without leave -- I mean, I had -- I gave you leave to amend
23 and put his name in.

24 MR. FLAXMAN: Well, speaking academically, I think
25 it's a fascinating issue about whether this is an appealable

1 order as a collateral order. And it's fascinating whether,
2 in the world of the internet and everything being available
3 to everybody, the same confidentiality or lack of
4 confidentiality or lack of pseudonym respect that the
5 court -- Seventh Circuit expressed ten years ago is still
6 applicable. But this is not the right case to raise that
7 now, given some developments.

8 MR. HABIB: It might be a fascinating legal issue,
9 but the fact is I've got a small client, Zalensny, who has
10 been brought into this lawsuit. The Court has granted my
11 motion to dismiss the complaint. Of course, it gave me leave
12 to re-file.

13 So while Mr. Flaxman can look at this, this is a
14 fascinating legal issue, what we should do here, at this
15 point, since the Court already granted the motion to dismiss
16 the complaint, counsel has not filed an amended complaint at
17 all, counsel is now saying he is being --

18 THE COURT: True. I gave you time.

19 MR. HABIB: -- withdrawn based upon --

20 THE COURT: So I think at this point, deal with the
21 Seventh Circuit. That's all I can say.

22 MR. HABIB: But, also, I would like at it this way:
23 Counsel, in his motion to withdraw, has specifically stated
24 at this point that his reason for withdrawal is that this
25 John Doe character used his real name in another lawsuit.

1 Well, here is our situation. We do not have a complaint on
2 file because it has been struck. We have the representation
3 by counsel now that he has to withdraw due to what a, however
4 you want to describe it, the actions of the John Doe
5 character which, in effect, is an insult, to the way I look
6 at it, to this Court.

7 So what I would ask the Court to do is this:
8 Dismiss this case right now. And if this John Doe character
9 wants to appeal, or, better yet, if he wants to re-file a new
10 lawsuit, let him do so. But from my point of view --

11 THE COURT: I think that's what I did.

12 MR. HABIB: -- Zalensny can't afford -- barely
13 afford to pay me. We're stuck here. Counsel might talk
14 about we have interesting legal issues here.

15 MS. BEDNAREK: Your Honor?

16 MR. HABIB: Maybe they are. But that's not the way
17 I look at it.

18 MS. BEDNAREK: Your Honor, if I may? I think your
19 last order was if plaintiff did not file an amended
20 complaint, the dismissal would convert to with prejudice.
21 And I don't think that your Honor has entered an order
22 stating that it is now with prejudice. I think the minute
23 entry order and the memorandum had two different types of
24 language, whether it would automatically convert, whether
25 your Honor would need to enter one.

1 THE COURT: Oh.

2 MS. BEDNAREK: So I think that, if that happens,
3 then Seventh Circuit can deal with it.

4 THE COURT: Okay. My only concern, as I said at
5 the beginning was, what orders are appropriate for a District
6 court to enter after somebody has -- while something is
7 pending upstairs, I don't even know -- well, I guess you
8 appealed -- Oh, I don't see why it should stop -- they can
9 always tell me if they don't like it.

10 MR. FLAXMAN: Well, I would -- I would ask your
11 Honor to do what your Honor said she was going to do at the
12 beginning, which is to allow the Flaxman people to withdraw
13 and give Mr. Doe until -- 14 days to -- to file a complaint
14 with his true identity.

15 THE COURT: I'll think about it.

16 MR. FLAXMAN: I think it would be -- I don't know,
17 just speaking academically because I don't have -- I hope I
18 don't have any stake in the outcome of this. I think it
19 would be abuse of discretion to dismiss the case right now
20 today while we filed, in good faith, a motion to stay
21 proceedings while the appeal is pending and not giving the
22 plaintiff actual notice of what's going on when his attorney
23 appears and says I can't represent this guy anymore. I think
24 you have to give him time to decide what he wants to do. And
25 I suspect that he'll file with his other attorney a complaint

1 with his name. And this whole thing will be moot and it will
2 just be another bad experience in my legal career.

3 MR. HABIB: Actually, your Honor, I kind of look at
4 it this way: We have the complaint, which your Honor struck
5 at this point. We also have showing, as represented by
6 counsel, that, in effect, the reasons that he was proceeding
7 with John Doe at this point are nonsense because he used his
8 name, apparently, in a real lawsuit at this point.

9 So the situation this Court has before it is this:
10 We have a complaint that -- there is no complaint on file at
11 the moment. But, more important, we have the very fact that,
12 in effect, this John Doe at this point, in his claim at this
13 point that he does not want to reveal his identity has, in
14 effect, misled the Court, maybe Mr. Flaxman, whatever, at
15 this point because he has now, apparently, according to
16 Mr. Flaxman's motion, setting forth that he used his name in
17 another lawsuit against, apparently, another type of civil
18 rights suit.

19 So I think the Court right now both has the
20 jurisdiction and, more important, good reason to simply
21 dismiss this case. You've got a basic misrepresentation by
22 the plaintiff when he went -- when he went forward with this
23 lawsuit that it was crucial to protect his John Doe
24 character. And, in effect, he is claiming now that's not the
25 case.

1 THE COURT: Well, at this point I think I better
2 reread the complaint, to start with. But I'm not going to do
3 it while I'm in court, so. Okay. I'll do something with it
4 later today, according to what I think is procedurally proper
5 and with what you say in mind, looking at the complaint.

6 I mean, the basic complaint I don't think had to do
7 with the John Doe issue, it had to do with what he says was
8 his, I think, violation. But, honestly, I haven't read the
9 complaint in two months so I don't want to make any statement
10 about what's in that complaint without going back and
11 spending ten minutes looking at it, five minutes, whatever it
12 takes. Okay. I'll do something after court. Thank you.

13 MR. HABIB: All right. Thank you, your Honor.

14 MS. BEDNAREK: Thank you, Judge.

15 (Which were all the proceedings heard.)

16 CERTIFICATE

17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above-entitled matter.

19 */s/Sandra M. Tennis*

June 24, 2015

20 _____
21 Sandra M. Tennis
22 Official Court Reporter

Date